

## ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Section 2.18.035 of the Lincoln Municipal Code,  
2 relating to bid protests of awards made by the City for purchases where bids are required, to revise  
3 the time frame under which bidders may protest to better clarify when the opportunity begins and  
4 ends; to revise the filing fee to better reflect the City's costs in undertaking the protest effort; and to  
5 clarify the abilities of the City to proceed with or suspend purchases during the time of a protest; and  
6 repealing Section 2.18.035 of the Lincoln Municipal Code as hitherto existing.

7 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

8 Section 1. That Section 2.18.035 of the Lincoln Municipal Code be amended to read  
9 as follows:

10 **2.18.035 Bid Protests; Definitions; Appeals Board; Fees.**

11 (a) Definitions.

12 (1) **Interested party** shall mean an actual or prospective bidder whose direct  
13 economic interest would be affected by the award of a contract by the City to another party, or by  
14 the failure of the City to award a contract to such actual or prospective bidder.

15 (2) **Protest** shall mean a written objection by an interested party on any phase of  
16 the bidding process, including specification preparation, bid solicitation, and intent to award, for the  
17 acquisition of supplies or services.

18 (3) **Procurement Appeals Board** shall mean an independent panel of five  
19 disinterested individuals appointed by the Mayor, which individuals shall have a thorough  
20 knowledge of the purchasing process and practices, and laws applicable thereto. Members of such  
21 board shall be appointed for three-year, staggered terms; provided, however, two of the members  
22 first appointed shall serve for a period of one year, two shall serve for a period of two years, and one

1 for a period of three years, with each appointee thereafter, except for appointees filling a vacancy,  
2 serving for a period of three years.

3 (b) Right to Protest. An interested party may protest to the City Purchasing Agent,  
4 which protest shall be submitted in writing on company letterhead ~~within five working days after~~  
5 ~~public notice of the bid.~~ Protests based on alleged apparent improprieties in a solicitation or other  
6 request for proposals must be filed before bid opening or the closing date for receipt of proposals.  
7 In all other cases, the protest must be filed within five working days following the bid opening or  
8 if the protest is based on the selection of the lowest responsible bidder, not later than five working  
9 days following the selection of the lowest responsible bidder. To expedite handling of protests, the  
10 envelope containing the protest should be clearly labeled "Protest".

11 The written protest shall include as a minimum the following:

- 12 (1) The name and address of the interested party;
- 13 (2) Appropriate identification of the relevant solicitation, and if a bid has been  
14 opened, its number, and date of opening;
- 15 (3) A statement of reasons for the protest;
- 16 (4) Supporting exhibits, evidence, or documents to substantiate any claims unless  
17 not available within the filing time, in which case the expected availability date shall be indicated.

18 The City Purchasing Agent will immediately decide upon receipt of the protest whether or  
19 not the award of a contract shall be delayed, or if the protest is timely received after the award,  
20 whether the performance of the contract should be suspended. The City shall not proceed further  
21 with the solicitation or with the award of the contract and shall suspend performance under the  
22 contract, if awarded, unless the City Purchasing Agent makes a written determination that the protest  
23 is clearly without merit or that award of the contract without delay is necessary to protect the  
24 substantial interests of the City.

25 (c) Authority to Resolve Protests. Prior to the commencement of an appeal to the  
26 Procurement Appeals Board concerning any protest, the Purchasing Agent shall attempt to resolve  
27 any protest filed by an interested party concerning any solicitation. If the protest is not resolved by

1 mutual agreement, the Purchasing Agent shall issue a decision in writing within five working days.  
2 The decision shall (1) state the reasons for the action taken, and (2) inform the interested party of  
3 their right to the administrative review as provided by the Procurement Appeals Board. A copy of  
4 the decision shall be mailed or otherwise furnished immediately to the ~~interested party and any other~~  
5 ~~party intervening~~ protester and all other bidders. If not satisfied with the decision of the Purchasing  
6 Agent, any ~~interested party~~ protester may appeal to the Procurement Appeals Board, but the decision  
7 shall be final unless the ~~interested party~~ protester files a timely appeal with the Procurement Appeals  
8 Board.

9 (d) Appeals Board Procedures. Any ~~interested party~~ protester, within five working days  
10 of receipt of a decision of the Purchasing Agent, may file with the Finance Director a written notice  
11 of appeal for a hearing before the Procurement Appeals Board. The Notice of Appeal shall be  
12 accompanied by a deposit of ~~\$50.00~~ \$500.00 to defray the cost of processing such appeal, which  
13 deposit shall be returned if the Mayor decides in favor of the ~~interested party~~ protester filing the  
14 appeal. The Notice of Appeal must clearly state the action protested and the basis of appeal.

15 Upon receipt of an appeal from an ~~interested party~~ protester, the Finance Director shall  
16 convene the Board within ten working days or as soon thereafter as reasonably possible to conduct  
17 an administrative review of the appeal. The Board shall decide whether the solicitation being  
18 appealed was in accordance with all applicable laws and regulations and the terms and conditions  
19 of all applicable specifications, and whether waiver of specifications, conditions or defects in a bid,  
20 if any, were justified and in the best interest of the City.

21 Within ten working days of hearing such appeal, the Board shall submit its findings and  
22 recommendations to the Mayor. If all five members are present, an affirmative vote of three shall  
23 be required to pass the recommendation on to the Mayor. If only three members are present, only  
24 an affirmative vote of two shall be required to pass the recommendation on to the Mayor. Should  
25 it become impossible to obtain a quorum of three members, the appeal shall proceed directly to the  
26 Mayor without Procurement Appeals Board action.

1 No determination by the Board concerning an issue of law or fact shall be final or binding  
2 on the City.

3 (e) Finality of Decision. The Mayor shall consider the recommendations of the  
4 Purchasing Agent, the Procurement Appeals Board, and the Department Head or agency for which  
5 the solicitation was made and shall make the final decision on the protest. The Mayor's decision  
6 shall be final and binding upon the City.

7 Section 2. That Section 2.18.035 of the Lincoln Municipal Code as hitherto existing  
8 be and the same is hereby repealed.

9 Section 3. That this ordinance shall take effect and be in force from and after its  
10 passage and publication according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2005:

\_\_\_\_\_  
Mayor